

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**M.F., a minor, by and through his father, §
MICHAEL FISHER, and his mother, §
KATHERINE FISHER, §**

Plaintiff, §

v. §

**CARROLL INDEPENDENT §
SCHOOL DISTRICT, WHITNEY §
WHEELER, in her individual capacity §
and capacity as Principal of Durham §
Intermediate School, AND KIM RAY, §
in her individual capacity and capacity §
as Assistant Principal and Campus §
Behavior Coordinator of Durham §
Intermediate School, §**

Defendants. §

Civil Action No. 4:23-cv-01102-O

JURY TRIAL DEMANDED

**PLAINTIFF M.F.'S EMERGENCY MOTION TO EXTEND THE TRO AND CONTINUE
THE PRELIMINARY-INJUNCTION HEARING TO PROVIDE DEFENDANTS'
SUFFICIENT TIME TO SATISFY THEIR FERPA OBLIGATIONS, OR, IN THE
ALTERNATIVE, TO PRECLUDE SUCH FERPA-PROTECTED MATERIALS**

Pursuant to Local Rules 7.1(i) and 7.2(e), Plaintiff M.F., a minor, by and through his father, Michael Fisher, and his mother, Katherine Fisher, files this Appendix in Support of His Brief in Support of His Emergency Motion for Continuance, or, in the Alternative, to Exclude Evidence of FERPA-Protected Materials.

Plaintiff relies on the following in support of his Motion:

Exhibit	Document	Appendix Page
A	Declaration of Griffin S. Rubin	001-002

**PLAINTIFF M.F.'S EMERGENCY MOTION TO EXTEND THE TRO AND CONTINUE THE
PRELIMINARY-INJUNCTION HEARING TO PROVIDE DEFENDANTS' SUFFICIENT TIME TO
SATISFY THEIR FERPA OBLIGATIONS, OR, IN THE ALTERNATIVE, TO PRECLUDE SUCH
FERPA-PROTECTED MATERIALS**

1	Carroll Independent School District's Objections and Responses to Plaintiff's First Request for Production	003-005
2	Whitney Wheeler's Objections and Responses to Plaintiff's First Request for Production	006-008
3	Kim Ray's Objections and Responses to Plaintiff's First Request for Production	009-011
4	231115 Email chain between G. Rubin, A. Allman, T. Davis re Court-Ordered Production Deadline	012-013

Dated: November 15, 2023

Respectfully submitted,

/s/ Griffin S. Rubin

Mazin A. Sbaiti

Texas Bar No. 24058096

mas@sbaitilaw.com

Jonathan Bridges

Texas Bar No. 24028835

jeb@sbaitilaw.com

Griffin S. Rubin

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ATTORNEYS FOR PLAINTIFF

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Intermediate School, §**

Defendants. §

Civil Action No. 4:23-cv-01102-O

DECLARATION OF GRIFFIN S. RUBIN

1. My name is Griffin Simon Rubin. My date of birth is November 26, 1994. I am over the age of 18, am competent to make this Declaration, and do so based on personal knowledge.

2. I represent Plaintiff M.F., a minor, by and through his father, Michael Fisher, and his mother, Katherine Fisher, in this action.

3. Attached hereto as Exhibit 1 is a true and correct copy of Carroll Independent School District's Objections and Responses to Plaintiff's First Request for Production.

4. Attached hereto as Exhibit 2 is a true and correct copy of Whitney Wheeler's Objections and Responses to Plaintiff's First Request for Production.

5. Attached hereto as Exhibit 3 is a true and correct copy of Kim Ray's Objections and Responses to Plaintiff's First Request for Production.

6. Attached hereto as Exhibit 4 is a true and correct copy of the email chain between the undersigned, Allison Allman, and Timothy Davis, with copies to Mazin Sbaiti, Jonathan Bridges, Kim James, and Melissa Pittmon, which began on November 15, 2023 at 12:13 a.m. and concluded on November 15, 2023 at 1:39 a.m. regarding the court-ordered production deadline.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 15, 2023.

A handwritten signature in black ink, appearing to read "Griffin S. Rubin", written in a cursive style.

Griffin S. Rubin

FIRST REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Each Communication Concerning the posts M.F. created and published at issue in this Lawsuit.

RESPONSE: Defendant objects to this request as overbroad and seeking documents covered by the attorney-client privilege and/or work product doctrines. This matter is on-going and Defendant is a public school system with hundreds of employees. Defendant continues to receive communications from third parties related to the posts M.F. created and published at issue in this Lawsuit. Subject to and without waiving the foregoing objections, Defendant will produce non-privileged documents in accordance with the Court's November 10, 2023 Order and as indicated above.

REQUEST FOR PRODUCTION NO. 2: Each document Concerning any investigation and discipline of M.F. Concerning the posts M.F. created and published at issue in this Lawsuit.

RESPONSE: Defendant objects to this request as overbroad and seeking documents covered by the attorney-client privilege and/or work product doctrines. Defendant further objects to this request as vague and ambiguous because "investigation" is left undefined. This matter is on-going and Defendant is a public school system with hundreds of employees. Defendant continues to receive communications from third parties related to the posts M.F. created and published at issue in this Lawsuit. Subject to and without waiving the foregoing objections, Defendant will produce non-privileged documents in accordance with the Court's November 10, 2023 Order and as indicated above.

REQUEST FOR PRODUCTION NO. 3: A true and correct copy of the recording of M.F.'s administrative hearing that took place at Durham Intermediate School on October 27, 2023.

RESPONSE: Defendant will produce a true and correct copy of the requested recording in accordance with the Court's November 10, 2023 Order.

Respectfully submitted,

/s/ Timothy Davis

Timothy Davis
State Bar No. 24086142
tdavis@jw.com
Allison Allman
State Bar No. 24094023
aallman@jw.com
JACKSON WALKER LLP
777 Main Street, Suite 2100
Fort Worth, Texas 76102-5360
Tel. (817) 334-7246
Fax (817) 870-5146

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2023, a copy of the foregoing document was served as indicated below:

Via Email:

Mazin A. Sbaiti
mas@sbaitilaw.com
Jonathan Bridges
jeb@sbaitilaw.com
Griffin S. Rubin
gsr@sbaitilaw.com
SBAITI & COMPANY PLLC
Dallas Arts Tower
2200 Ross Avenue, Suite 4900W
Dallas, Texas 75201

ATTORNEYS FOR PLAINTIFF

/s/ Allison Allman

Allison Allman

state and federal regulations, including but not limited to the Family Educational Rights and Privacy Act (“FERPA”).

FIRST REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Each communication You made or received regardless of the capacity in which You made or received such Communication(s), Concerning the posts M.F. created and published at issue in this Lawsuit.

RESPONSE: Defendant objects to this request as overbroad and seeking documents covered by the attorney-client privilege and/or work product doctrines. Subject to and without waiving the foregoing objections, Defendant will produce non-privileged documents in accordance with the Court’s November 10, 2023 Order and as indicated above.

REQUEST FOR PRODUCTION NO. 2: Each Document reflecting any investigation, or any parties thereof, and discipline of M.F. Concerning the posts M.F. created and published at issue in this Lawsuit.

RESPONSE: Defendant objects to this request as overbroad and seeking documents covered by the attorney-client privilege and/or work product doctrines. Defendant further objects to this request as vague and ambiguous because “investigation” is left undefined. Subject to and without waiving the foregoing objections, Defendant will produce non-privileged documents in accordance with the Court’s November 10, 2023 Order and as indicated above.

REQUEST FOR PRODUCTION NO. 3: Each Communication and Document Concerning, as You stated in the Affidavit, “the mistruths within this lawsuit and the constant bullying from the community.”

RESPONSE: Defendant objects to this request as overbroad and seeking documents covered by the attorney-client privilege and/or work product doctrines. Subject to and without waiving the foregoing objections, Defendant will produce non-privileged documents that are relevant to this lawsuit, including the mistruths alleged therein, in accordance with the Court’s November 10, 2023 Order and as indicated above.

REQUEST FOR PRODUCTION NO. 3: Each Communication and Document Concerning, as You stated in the Affidavit, the “toll on [Your] mental health and overall well-being” allegedly caused by this Lawsuit.

RESPONSE: Defendant objects to this request as overbroad and seeking documents covered by the attorney-client privilege and/or work product doctrines. Subject to and without waiving the foregoing objections, Defendant will produce non-privileged documents in accordance with the Court’s November 10, 2023 Order and as indicated above, and supplement as needed.

Respectfully submitted,

/s/ Timothy Davis

Timothy Davis
State Bar No. 24086142
tdavis@jw.com
Allison Allman
State Bar No. 24094023
aallman@jw.com
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mas@sbaitilaw.com
Jonathan Bridges
jeb@sbaitilaw.com
Griffin S. Rubin
gsr@sbaitilaw.com
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Dallas Arts Tower
2200 Ross Avenue, Suite 4900W
Dallas, Texas 75201

ATTORNEYS FOR PLAINTIFF

/s/ Allison Allman

Allison Allman

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Respectfully submitted,

/s/ Timothy Davis

Timothy Davis

State Bar No. 24086142

tdavis@jw.com

Allison Allman

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mas@sbaitilaw.com
Jonathan Bridges
jeb@sbaitilaw.com
Griffin S. Rubin
gsr@sbaitilaw.com
SBAITI & COMPANY PLLC
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2200 Ross Avenue, Suite 4900W
Dallas, Texas 75201

ATTORNEYS FOR PLAINTIFF

/s/ Allison Allman

Allison Allman

From: [Griffin S. Rubin](#)
To: [Allman, Alli](#); [Davis, Tim](#)
Cc: [Mazin Sbaiti](#); [Jonathan E. Bridges](#); [Kim James](#); [Melissa Pittmon](#)
Subject: RE: M.F. v. Carroll ISD et al. - Court-Ordered Production Deadline
Date: Wednesday, November 15, 2023 1:39:52 AM
Attachments: [image005.png](#)
[image006.png](#)
[image007.png](#)
[image001.png](#)
Importance: High

Counsel,

Thank you for sending this now. Jonathan and I did not receive your initial attempt at producing the documents, and we have not heard from any other members of the team that they received it. We believe that the production never transmitted.

There are several critical deficiencies apparent on the face of Defendants' production. First, even though the Court already determined that Plaintiff's requests were "narrowly tailored," ECF No. 20, Defendants objected to every single RFP on the basis of overbreadth other than the request to the District for the recording of the administrative hearing. Second, there is no indication whether any discovery materials are being withheld on the basis of any asserted objection or privilege. Third, it appears that all documents Defendants produced are designated "Highly Confidential" or "Attorneys Eyes Only" despite (1) there being no protective order or stipulation from the parties in place, and (2) there being an applicable FERPA exception for documents ordered produced by a court—if it is Defendants' intention that counsel for Plaintiff be precluded from showing any of these documents to the clients or that Plaintiff be unable to use any of these documents at the hearing tomorrow, Defendants will need to file a motion. Fourth, despite claiming privilege of some kind for every single RFP other than the request to the District for the recording of the administrative hearing, Defendants did not comply with the Court-ordered requests' instruction to produce privilege logs. Are privilege logs coming imminently, or is Plaintiff entirely precluded from challenging privilege designations at or prior to the preliminary-injunction hearing?

As well, a number of the photocopies of documents are almost entirely illegible. It appears also that many of the documents may have been in color but were photocopied in black and white, making the documents illegible. And some of these documents which have some legible and some illegible writing appear to be on Defendants' exhibit list. Are Defendants planning on using such documents at the hearing?

Please let me know when you are available to meet and confer ASAP on these issues, preferably before 9 a.m. today.

Defendants' late, problematic production has put Plaintiff in a real bind. If Defendants are planning to resolve these issues by the morning, then we think things might be okay. Otherwise, we may be forced to request a continuance or alternative relief.

Griffin S. Rubin | ATTORNEY



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From: Allman, Alli <aallman@jw.com>



Sent: Wednesday, November 15, 2023 12:18 AM

To: Griffin S. Rubin <GSR@sbaitilaw.com>; Davis, Tim <tdavis@jw.com>

Cc: Mazin Sbaiti <MAS@sbaitilaw.com>; Jonathan E. Bridges <JEB@sbaitilaw.com>; Kim James <KRJ@sbaitilaw.com>; Melissa Pittmon <MGP@sbaitilaw.com>; Allman, Alli <aallman@jw.com>; Gonzalez, Leo <lgonzalez@jw.com>; Gorz, Christa <cgorz@jw.com>

Subject: RE: M.F. v. Carroll ISD et al. - Court-Ordered Production Deadline

Griffin,

The discovery was produced to you and your team in a link provided in the attached email. Please let our Litigation Support member (Leo Gonzalez, copied above) know if you have any trouble accessing the documents.

Alli Allman

777 Main Street Suite 2100 | Fort Worth, TX | 76102

V: (817) 334-7206 | F: (817) 870-5126 | aallman@jw.com



From: Griffin S. Rubin <GSR@sbaitilaw.com>

Sent: Wednesday, November 15, 2023 12:13 AM

To: Davis, Tim <tdavis@jw.com>; Allman, Alli <aallman@jw.com>

Cc: Mazin Sbaiti <MAS@sbaitilaw.com>; Jonathan E. Bridges <JEB@sbaitilaw.com>; Kim James <KRJ@sbaitilaw.com>; Melissa Pittmon <MGP@sbaitilaw.com>

Subject: M.F. v. Carroll ISD et al. - Court-Ordered Production Deadline

Importance: High

****RECEIVED FROM EXTERNAL SENDER – USE CAUTION****

Counsel,

Our team waited up until midnight for Defendants to produce the discovery materials ordered by the Court. Midnight has come and gone, and we still have nothing from Defendants. Can you please tell us the status of the production so we know whether to wait up for it or to go to bed?

Griffin S. Rubin | ATTORNEY

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